

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Crl.Rev.Pet.No. 3509 of 2007()

CRA.426/2006 of ADDL. DISTRICT & SESSIONS COURT (ADHOC-I),
KOZHIKODE
CC.151/2000 of JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY
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REVN. PETITIONER: APPELLANT/ACCUSED

UNNIKRISHNAN, S/O.KUNHOMAN,
AGED 50 YEARS, RESIDING AT MUKKUNNUMMAL HOUSE,
AVIDANALLOOR AMSOM AND DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE, BALUSSERY POLICE STATION,
BALUSSERY, KOZHIKODE DISTRICT.

BY ADV.SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 3509 OF 2007

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Dated this the 4th day of October, 2007.

ORDER

The revision petitioner was the sole accused in C.C. No. 151/2000 on the file of Judicial First Class Magistrate, Koyilandy for offences punishable under Sections 447 and 324 IPC. He has been concurrently convicted by the courts below for the offence punishable under Section 324 IPC and sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.2000/- and on default to pay the fine, to suffer rigorous imprisonment for one month more.

2. The case of the prosecution can be summarised as follows:

On 14.03.1999 at about 4 p.m. in the paramba owned and possessed by PW3, the husband of PW2, he was plucking cashew nuts from the cashew trees. While so, PW2 was collecting the plucked nuts. At that time the accused criminally trespassed upon the property and voluntarily caused hurt to PW2 on both her hands using a chopper. When PW1, the defacto complainant

who is the nephew of PW3 attempted to rescue PW2 the accused voluntarily caused hurt to PW2 also using the chopper. The accused has thereby committed offences punishable under Sections 447 and 324 IPC.

3. On the accused pleading not guilty to the charge framed against him by the trial court, the prosecution was allowed to prove its case. The prosecution examined 8 witnesses as PWs 1 to 8 and got marked four documents as Exts.P1 to P4.

4. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained their innocence. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 31.05.2006 acquitted the revision petitioner for the offence punishable under Section 447 IPC, but, convicted him under Section 324 IPC and imposed the sentence referred to above. Even though the revision petitioner preferred an appeal before

the Sessions Court, Kozhikode as Crl. Appeal No. 426/2006, the Additional Sessions (Fast Track II), Kozhikode, as per judgment dated 31.08.2007 dismissed the appeal confirming the conviction entered and sentence passed against the revision petitioner. Hence, this revision.

6. Even though the learned counsel appearing for the revision petitioner assailed the conviction against the revision petitioner on various grounds, in as much as the said conviction has been recorded by the courts below after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loath to interfere with the conviction so recorded. The conviction is accordingly confirmed.

7. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioner. Having regard to the fact that the accused is a distant relative of PWs 1 to 3 and having further regard to the relatively minor injuries sustained by PWs 2 and 3, I do not think that the revision petitioner deserves penal servitude by way of incarceration. I am of the view that the

interest of justice will be adequately met by directing the revision petitioner to compensate the victims under Section 357(3) Cr.P.C and to undergo imprisonment till the rising of the court. Accordingly, the sentence imposed on the revision is set aside and instead he shall undergo imprisonment till the rising of the court and shall pay a sum of Rs.2,500/- and Rs.5000/- respectively to PWs 2 and 3 (the injured) under Section 357(3) Cr.P.C for the conviction under Section 324 IPC. On default to pay the compensation, the revision petitioner shall undergo simple imprisonment for two months. Time for remitting the compensation amount shall be 45 days from today.

In the result, the revision petition is disposed of confirming the conviction entered but modifying the sentence as above.

sd/-**V. RAMKUMAR, JUDGE.**

rv

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